

November 1, 2013

By ECF and Hand

The Honorable P. Kevin Castel
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, New York 10007

Re: Sullivan v. Barclays PLC et al., No. 13-CV-2811

Dear Judge Castel:

This joint letter is submitted on behalf of all parties to the above-captioned matter. In accordance with the Court's July 10 Order, Plaintiff intends to file an amended complaint on or before November 2, 2013. For the reasons set forth below, Plaintiff also intends to file a second amended complaint after he receives additional information under ACPERA¹ from an immunity applicant, when such cooperation will not interfere with ongoing Department of Justice ("DOJ") investigations. In the interests of judicial economy, all parties request that Defendants not be required to respond to the first amended complaint that will be filed on or before November 2, and instead that Defendants (including any additional Defendants) move against the second amended complaint after it has been filed. The parties further seek an adjournment of the upcoming Initial Pretrial Conference, currently scheduled for November 19, 2013, at 11:00 a.m., to a time after Plaintiff's second amended complaint has been filed.

Background

On July 3, 2013, the parties jointly submitted a letter request to postpone the Initial Pretrial Conference, then scheduled for July 12, 2013, for a period of four (4) months. In that letter, Plaintiff explained that such a postponement would permit him needed time to file an amended complaint, which would incorporate significant additional information related to his claims. Plaintiff further explained that he expected to receive substantial information as a result of cooperation under ACPERA from a disclosed leniency applicant, Defendant Barclays. Plaintiff explained that the timing of such

¹ Antitrust Criminal Penalty Enhancement and Reform Act, Pub. L. No. 108-237, 118 Stat. 661 (codified as amended at 15 U.S.C. § 1 note).

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cooperation was contingent on the progress of DOJ's ongoing investigations into related matters, and whether cooperation by Barclays during that four-month period would be viewed by DOJ as potentially interfering with DOJ's investigations and any resulting prosecutions. With those concerns in mind, Plaintiff stated the following: "In the event that Plaintiff has not received the ACPERA cooperation [within four months of July 3], Plaintiff respectfully submits that it may be in the interests of judicial economy that there be a further extension."

The Court endorsed the parties' July 3 joint request on July 10, setting November 2, 2013 as the due date for Plaintiff's amended complaint and scheduling the Initial Pretrial Conference for November 19, 2013 at 11:00 a.m.

Plaintiff's Statement

Barclays has informed Plaintiff that DOJ's investigations are ongoing and that DOJ continues to be of the view that deferral of the commencement of Barclays' cooperation is appropriate to avoid any interference with those investigations. As a result, Barclays has not yet commenced ACPERA cooperation.

Plaintiff will, however, file an amended complaint on or before November 2, 2013, that will, among other things, name Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. ("Rabobank") as an additional Defendant in light of information contained in recently announced settlement agreements between Rabobank and DOJ, the Commodity Futures Trading Commission, and the U.K. Financial Conduct Authority, which disclose Rabobank's activity involving submissions to the Euro Interbank Offered Rate ("Euribor"). Plaintiff will also name additional Defendants and expand other allegations in the amended complaint. Plaintiff believes it is appropriate to file his amended complaint as soon as possible, particularly because he is naming, and will need to serve, a number of new Defendants.

In addition, Plaintiff intends to file a second amended complaint as soon as practicable after he receives certain ACPERA cooperation from Barclays. Although Plaintiff believes that his soon-to-be-filed amended complaint adequately alleges claims against each Defendant, Plaintiff submits that the interests of judicial economy would be better served by delaying the briefing of any motions to dismiss until after Plaintiff has received the ACPERA cooperation, which may identify additional participants or other information.

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The Parties' Joint Request

In light of the uncertain timing of DOJ's continuing investigations, the parties do not currently have an informed sense of when Barclays' cooperation will begin. Accordingly, the parties respectfully submit that it would be in the interests of judicial economy that the Court (i) extend the deadline for Defendants to respond to or move against the complaint until after Plaintiff has filed his second amended complaint; and (ii) adjourn the Initial Pretrial Conference until a later date, after Plaintiff has filed his second amended complaint.

To facilitate the scheduling of these matters, the parties ask that the Court set March 3, 2014—approximately four (4) months from now—as a date on which the parties will report to the Court any developments that inform when Plaintiff will be able to file his second amended complaint, and when the Initial Pretrial Conference might be scheduled.

For the foregoing reasons, the parties ask that the Court enter an order granting the above-requested relief.

Respectfully submitted,

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